

## Internal Revenue Service

Department of the Treasury  
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Person To Contact:

Telephone Number:

Refer Reply To:

CC:PSI:4

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Date: MARCH 15, 2007

Re:

### Legend

Taxpayer =  
Trust =

Date 1 =  
Year 1 =  
Year 2 =  
Attorney 1 =  
Attorney 2 =  
Accountant =

Dear :

This is in response to a letter from your authorized representative dated January 23, 2007 and prior correspondence, requesting an extension of time under section 2642(g) of the Internal Revenue Code and § 301.9100 of the Procedure and Administration Regulations to make an allocation of generation-skipping transfer (GST) exemption.

### Facts

The facts and representations submitted are summarized as follows: Taxpayer created Trust on Date 1, for the benefit of her grandchildren, great grandchildren, a nephew and great-niece. Article IV of Trust provides that the co-trustees may distribute the net income and principal of Trust currently to or for the benefit of any beneficiary in such amounts as the co-trustees may deem advisable. If and when all living

beneficiaries attain the age of thirty-five years, Trust will terminate and the co-trustees will distribute absolutely the remaining trust property to or among the beneficiaries (or their successors) in equal shares.

Taxpayer transferred real estate to Trust in Year 1 and Year 2. Accountant prepared and filed a Form 709 for Year 1 and did not report the gift of real estate to Trust. It is represented that Accountant advised Taxpayer that it was not necessary to report the gifts to Trust in Year 1 and Year 2 because the gifts were less than the annual exclusion amount. In an affidavit, Accountant swore that he provided no advice to Taxpayer regarding the allocation of Taxpayer's GST exemption to the transfers to Trust. In an affidavit, Attorney 1, who drafted Trust, swore that he was not responsible for the preparation or filing of any Forms 709 for Taxpayer and provided no advice to Taxpayer regarding the allocation of Taxpayer's GST exemption to Trust. Upon review of Trust, Attorney 2 advised Taxpayer of the necessity to allocate Taxpayer's GST exemption to Trust and subsequently requested such relief to do so. Taxpayer has sufficient GST exemption available to allocate sufficient GST exemption to Trust. It is represented that no distributions have been made from Trust.

### Law and Analysis

Section 2601 imposes a tax on every generation-skipping transfer. A generation-skipping transfer is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2631(a), as in effect for the tax years at issue, provided that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 26.2632-1(b)(2) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

Section 2642(b)(1) provides that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by § 6075(b) for such transfer, the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 12

(within the meaning of § 2001(f)(2)) and such allocation shall be effective on and after the date of such transfer.

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under this paragraph, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief under this paragraph, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides that, under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and the time for electing to treat any trust as a generation-skipping transfer trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose date is prescribed by a regulation (and not expressly provided by statute). In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) under the provisions of § 301.9100-3.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Taxpayer is granted an extension of time of 60 days from the date of this letter to allocate her available GST exemption to the Year 1 and Year 2 transfers to Trust. The allocations will be effective

as of the respective date of the transfers to Trust and the value of the transfers to Trust as determined for federal gift tax purposes will be used in determining the amount of Taxpayer's GST exemption to be allocated to Trust.

This allocation should be made on a supplemental Form 709 and filed with the Cincinnati Service Center at the following address: Internal Revenue Service, Cincinnati Service Center – Stop 82, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Form 709.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

William P. O'Shea  
Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes  
Copy of this letter